

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0172
Withholding Tax
For the Years 1998 and 1999**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Withholding Tax—Addback of state and local income taxes

Authority: Ind. Code § 6-3-1-3.5(b); *Azstar Indiana Gaming Corp. v. Indiana Dept. of State Revenue*, 806 N.E.2d 381 (Ind. Tax 2004).

Taxpayer protests the addback of Riverboat Wagering Tax for adjusted gross income tax purposes.

II. Withholding Tax—Credits

Authority: Ind. Code § 6-3-4-13; Ind. Code § 6-3.1-17-1; Information Bulletin # 72

Taxpayer protests the failure to apply tax credits that it claims reduced its tax liability.

STATEMENT OF FACTS

Taxpayer was an S corporation that operated a casino in Indiana. Taxpayer was assessed additional withholding tax on its non-resident shareholders based on the adding back of Riverboat Wagering Tax. Taxpayer protested the assessment on two grounds. First, Taxpayer maintained that the Riverboat Wagering Tax was not a tax “based on or measured by income.” Second, Taxpayer maintained that the underlying tax liability had been paid by Taxpayer's shareholders.

Taxpayer was contacted with respect to this protest in early February; however, Taxpayer indicated that a hearing was not necessary based on the result of a prior court case and on the payments of tax by its shareholders. Accordingly, this letter of findings is being written based on information contained in the Department's file.

I. Withholding Tax—Addback of state and local income taxes

DISCUSSION

Taxpayer argues that the Riverboat Wagering Tax is not a “tax based on or measured by income” under Ind. Code § 6-3-1-3.5(b). In a published decision, the Indiana Tax Court has considered the issue of adding back the Riverboat Wagering Tax and concluded that the tax is subject to add back for corporate income tax purposes. *Azstar Indiana Gaming Corp. v. Indiana Dept. of State Revenue*, 806 N.E.2d 381 (Ind. Tax 2004).

FINDING

Taxpayer’s protest is denied.

II. Withholding Tax—Credits

DISCUSSION

Taxpayer also protests the imposition of the tax based on the disallowance of use of an Indiana Riverboat Building Tax Credit under Ind. Code § 6-3.1-17-1 *et. seq.*, that reduced its proposed liability. Under Ind. Code § 6-3-4-13(j), the filing of a composite adjusted gross income tax return on behalf of shareholders is conditioned on compliance with conditions set forth by the Department. Among the conditions set forth in Information Bulletin # 72 is “h) no credit carryovers are permitted.” The credit in question was a credit carryforward for 1997. Accordingly, Taxpayer is not entitled to use the credit carryforward.

However, with respect to payments made by the individual shareholders of the corporation for their individual income tax liability resulting from the flow-through of the additional income in controversy, Taxpayer is permitted to use the individuals’ payments as credits against Taxpayer’s liability.

FINDING

Taxpayer’s protest is sustained with respect to payments made by individual shareholders subject to audit verification, and denied with respect to the Riverboat Building Tax Credit.